

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN; ZACHARY
MARTELL; and BRIAN MCNEMAR,**
Individually and on behalf of all others
similarly situated,

Plaintiffs,

**Civil Action No. 3:20-cv-00740
Hon. Robert C. Chambers, Judge**

v.

WILLIAM CROUCH, in his official capacity as
Cabinet Secretary of the West Virginia
Department of Health and Human Resources;
CYNTHIA BEANE, in her official capacity as
Commissioner for the West Virginia Bureau for
Medical Services; **WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN
RESOURCES, BUREAU FOR MEDICAL
SERVICES; TED CHEATHAM**, in his official
Capacity as Director of the West Virginia Public
Employees Insurance Agency; and **THE
HEALTH PLAN OF WEST VIRGINIA, INC.**

Defendants.

**DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL
SERVICES'S MOTION FOR PARTIAL DISMISSAL OF
PLAINTIFFS' CLASS ACTION COMPLAINT**

Now come Defendants William Crouch, Cynthia Beane, and the West Virginia Department of Health and Human Resources, Bureau for Medical Services ("WVDHHR"), by counsel Lou Ann S. Cyrus, Roberta F. Green, Caleb B. David, Kimberly M. Bandy, and Shuman McCuskey Slicer PLLC, and request that the Plaintiffs' Class Action Complaint be dismissed in part against them. The WVDHHR moves, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure,

or, in the alternative, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for dismissal of Plaintiff Christopher Fain's claim for compensatory damages asserted in Count II of the Complaint on the basis that the claim is barred by the Eleventh Amendment to the United States Constitution. Additionally, Defendants William Crouch, Cynthia Beane, and the WVDHHR move to dismiss Plaintiffs' request for class certification.

Wherefore, for the reasons more fully set forth in their Memorandum of Law filed contemporaneously herewith, these Defendants request that their Motion for Partial Dismissal be granted, that the subject claims be dismissed against them, with prejudice, and for such other and further relief as the court may direct.

**WILLIAM CROUCH,
CYNTHIA BEANE, and
WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,
BUREAU FOR MEDICAL SERVICES,**

By counsel

/s/ Lou Ann S. Cyrus

Lou Ann S. Cyrus, Esquire (WVSB #6558)
Roberta F. Green, Esquire (WVSB #6598)
Caleb B. David, Esquire (WVSB #12732)
Kimberly M. Bandy, Esquire (WVSB #10081)
SHUMAN MCCUSKEY SLICER PLLC
P.O. Box 3953
Charleston, WV 25339
(304) 345-1400; (304) 343-1826 (fax)
lcyrus@shumanlaw.com
rgreen@shumanlaw.com
cdavid@shumanlaw.com
kbandy@shumanlaw.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

**CHRISTOPHER FAIN; ZACHARY
MARTELL; and BRIAN MCNEMAR,**
Individually and on behalf of all others
similarly situated,

Plaintiffs,

**Civil Action No. 3:20-cv-00740
Hon. Robert C. Chambers, Judge**

v.

WILLIAM CROUCH, in his official capacity as
Cabinet Secretary of the West Virginia
Department Of Health and Human Resources;
CYNTHIA BEANE, in her official capacity as
Commissioner for the West Virginia Bureau for
Medical Services; **WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN
RESOURCES, BUREAU FOR MEDICAL
SERVICES; TED CHEATHAM**, in his official
Capacity as Director of the West Virginia Public
Employees Insurance Agency; and **THE
HEALTH PLAN OF WEST VIRGINIA, INC.**

Defendants.

CERTIFICATE OF SERVICE

Now come Defendants, William Crouch, Cynthia Beane and West Virginia Department of Health and Human Resources, by counsel, and do hereby certify that on the 11th day of January, 2021, the foregoing **“DEFENDANTS WILLIAM CROUCH, CYNTHIA BEANE, AND WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, BUREAU FOR MEDICAL SERVICES’S MOTION FOR PARTIAL DISMISSAL OF PLAINTIFFS’ CLASS ACTION COMPLAINT”** was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to, and constitutes service on:

Walt Auvil (WVSB#190)
The Employment Law Center, PLLC
1208 Market Street
Parkersburg, WV 26101-4323

(304) 485-3058
(304) 485-6344 (fax)
auvil@theemploymentlawcenter.com

and

Avatara Smith-Carrington, Visiting Attorney
Lambda Legal
3500 Oak Lawn Avenue, Suite 500
Dallas Texas 75219-6722
(214) 219-8585
(214) 219-4455 (fax)
asmithcarrington@lambdalegal.org

/s/ Lou Ann S. Cyrus
Lou Ann S. Cyrus, Esquire (WVSB 6588)
Roberta F. Green, Esquire (WVSB#6598)
Caleb B. David, Esquire (WVSB#12732)
Kimberly M. Bandy, Esquire (WVSB 10081)